RALPH E. WILLIAMSON

IBLA 90-386 Decided February 16, 1993

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting class 1 color-of-title application ES 33034 (AL).

Set aside and remanded.

1. Color or Claim of Title: Generally--Color or Claim of Title: Cultivation--Color or Claim of Title: Improvements

Where BLM's determination that a class 1 color-of-title applicant has failed to show that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation is based on its review of the application and a field examination, but the record is unclear whether BLM properly considered whether the applicant's silvicultural activities support a claim that valuable improvements have been placed on the land, its decision rejecting the color-of-title application will be set aside and the application remanded for further consideration.

APPEARANCES: Ronald H. Strawbridge, Esq., Vernon, Alabama, and Hunter M. Gholson, Esq., Columbus, Mississippi, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Ralph E. Williamson has appealed from a May 1, 1990, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting color-of-title application ES 33034 (AL).

On November 25, 1983, Williamson 1/ filed a class 1 color-of-title application for 40 acres of land described as the NE^ SW^ sec. 17, T. 17 S., R. 14 W., Huntsville Meridian, Lamar County, Alabama, pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1988). Williamson traced his chain of title back to a 1955 conveyance and gave July 12,
1983, as the date he learned that he did not have clear title to the land. Williamson indicated that although no improvements had been placed on the land, all 40 acres of the land had been cultivated. The application further stated that Williamson was "in the business of growing timber. [Williamson] has two full time forresters [sic] employed to look after and manage his

1/ The application also named Daphine P. Williamson as an applicant.

timber land. This property, along with his other real estate, has been under [silvicultural] practice since it was purchased on April 14, 1962." 2/

A BLM community planner and a BLM realty specialist examined the land on June 6 and 7, 1985, guided by the two foresters employed by Williamson. The findings of the field investigation were described in a June 24, 1985, land report:

> Upon visiting this tract, several observed conclusions were reached: the tract was logged approximately 30 years ago; [3/] thinning and/or planting practices were not evident. This tract reforested only through natural means.
>
> After a close look, it is our belief that the tract was cleared and possibly farmed (30 or more years ago). As time went on, the site was not found to be productive for crop production and, as a result, was given up to nature. The trees, shrubs and forbs that are found on the site now probably established themselves shortly after the site was abandoned.

The report recommended that BLM reject the claim because the examiners were unable to identify any improvements and/or cultivation on the tract since it was purchased.

In its May 1, 1990, decision BLM found that Williamson had failed to demonstrate that valuable improvements existed on the land at the time the application was filed, that some part of the land had been reduced to cultivation at the time the application was filed, or that the land had been cultivated within the 10 years prior to the filing of the application. Since the valuable improvements and cultivation requirements under class 1 had not been met, BLM rejected Williamson's class 1 color-of-title application.

On appeal Williamson argues that both cultivation and the construction of improvements have occurred within the 10-year period prior to the filing of his application. Williamson contends that silviculture is an accepted form of commercial agriculture and that tree farming, clearing, grubbing, and improving the land for the production and marketing of the cash crop of timber satisfy the cultivation requirement. Williamson also claims that a drainage ditch constructed across a portion of the land constitutes a valuable improvement because it has enhanced the value of the land. Williamson

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2/ The warranty deed purporting to convey the land to Williamson is actually dated April 14, 1967.

3/ The case file contains a copy of an Oct. 24, 1964, timber deed from Williamson's grantors to the Futorian Manufacturing Corp. of New York, conveying the merchantable timber 10 inches or larger in diameter located on the described land which included the 40-acre parcel at issue here. This deed noted that pine seedlings had recently been planted on the land, but did not specifically identify the replanted acreage.

supports his arguments with the affidavits of two staff foresters who assert that a hardwood tree crop has been in continuous cultivation on the land, that the land has been maintained in accordance with accepted agricultural practices for the express purpose of cultivating hardwood timber, and that the drainage ditch has increased the value of the land by providing for improved run-off.

The Color of Title Act, 43 U.S.C. § 1068 (1988), provides in relevant part:

> The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, * * * issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $1.25 per acre * * *.

The method for obtaining patent outlined in subsection (a) of 43 U.S.C. § 1068 is known as a class 1 claim. 43 CFR 2540.0-5(b).

[1] BLM rejected Williamson's application because it concluded that valuable improvements had not been placed on the land nor had some part of the land been reduced to cultivation. Although BLM's decision did not elaborate on the rationale for these conclusions, information in the case file indicates that BLM's review focused on whether the claimed silvicultural activities adequately fulfilled the Act's cultivation requirement. This Board has held, however, that a color-of-title applicant's past actions relating to silviculture may well establish that the applicant has placed valuable improvements on the land as required for a class 1 claimant. Benton C. Cavin, 83 IBLA 107, 121 (1984); see also Soterra, Inc., 95 IBLA 352, 356 (1987); Ben S. Miller, 55 I.D. 73, 75-76 (1934). It is unclear whether the BLM examiners were sufficiently knowledgeable regarding silvicultural activities in order to make an informed judgment whether such activities on the land constituted valuable improvements. Since we are unable to determine from the present record whether BLM properly considered whether Williamson's silvicultural activities supported a claim that valuable improvements had been placed on the land, we set aside BLM's rejection of the application and remand the application to BLM for further consideration. 4/

A color-of-title applicant has the burden of proof to establish that the statutory requirements for purchase under the Act have been met. See Shirley & Pearl Warner, 125 IBLA 143, 148 (1993), and cases cited therein.

4/ On remand, BLM should also consider whether the drainage ditch mentioned by Williamson for the first time on appeal constitutes a valuable improvement placed on the land.

Therefore, on remand, Williamson has the burden of establishing that his silvicultural activities 5/ justify a finding that valuable improvements have been placed on the land. 6/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for further action consistent with this opinion.

John H. Kelly
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

5/ Williamson has provided very little specific information concerning the actual silvicultural activities he has performed on the land. On remand, he should describe in detail those activities and explain how they have enhanced the value of the land.

6/ Our resolution of this appeal renders unnecessary any determination of whether, and under what circumstances, silvicultural activities might be deemed to be cultivation under the Act. See Benton Cavin, 83 IBLA at 121 n.18.